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August 18, 1999

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Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. – TW-A325  
Washington, DC 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets,  
WT Docket No. 99-217; Implementation of the Local Competition  
Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 ✓

Dear Ms. Salas:

I am writing in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. I have enclosed six (6) copies of this letter, in addition to the original.

I believe that, if enacted, the action proposed by the FCC will effect a taking of my property without just compensation. Such actions will not only interfere with my business operations and give my property to large and wealthy telecommunications firms, such actions will unnecessarily and unfairly hurt my business, place the residents at a competitive disadvantage for the purchase of telecommunications services, and needlessly raise additional legal problems as a result of this unprecedented government action.

My company, Leon N. Weiner & Associates, Inc., and our affiliates are in the business of providing multifamily rental homes in 75 communities in 10 New England and Mid-Atlantic States.

Issues Raised by FCC Notice

*I am shocked by the proposed rule.* It seeks to give a permanent easement to any telecommunications provider that has an interest in selling services to my tenants without my consent. It purports to do this in the name of consumer protection, hoping to provide less expensive services to tenants through a system you have called "non-discriminatory access." I believe this practice is misguided, is unnecessary, and will harm the residents in my properties.



Ms. Magalie Roman Salas  
Secretary  
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August 18, 1999  
Page 2 of 4

First, let me assure you that my company is doing everything it can to meet our tenants' needs and demands for access to a wide range of telecommunications services. Ours is an extremely competitive industry. We compete with other multifamily properties in every community in which our properties are located. In addition to competing on unit size, location and lay-out, one of the primary areas of competition is the set of amenities we can provide to our tenants. One of the most important of these is telecommunications services.

In each of my properties, in each market in which we are located, my company studies the market, analyzes the best package of telecommunications services available, determines what our tenants want and negotiates vigorously with providers of these services. If tenants with month-to-month or one-year tenancies are forced to negotiate directly with national or international telecommunications firms, they will be at a decided disadvantage. My company has the negotiating strength afforded one who represents thousands of tenants. No individual can strike as good a deal as we can in this collective manner.

In addition, I must note that the proposed rule raises the following additional concerns: it would expand the scope of existing easements; in some instances it will interfere with existing exclusive contracts; and it may expand the satellite dish rules to include non-video services.

**1. FCC Action is Not Necessary**

- As stated above, ours is a highly competitive industry that demands we provide tenants with services at an attractive rate. This ruling will do nothing to further that aspect, but will only serve to confuse tenants and effect a take of private property.

**2. Nondiscriminatory Access**

- There is no such thing as "nondiscriminatory access." There are dozens of providers out there, but limited space in buildings means that only a handful of providers can install facilities in a particular building. Nondiscriminatory access discriminates in favor of the first few entrants.
- Building owners must have control over space occupied by telecommunications providers, especially when there are multiple providers involved. This is to protect the tenants and to protect the integrity of the building itself as well as its appearance.

- Building owners must have control over who enters their buildings: owners face liability for damage to buildings, leased premises, and facilities of other providers; and for personal injury to tenants and visitors. Owners are also liable for safety code violations. Qualifications and reliability of providers are a real issue.
- What does “nondiscriminatory” mean? Deal terms vary because each deal is different. A new company without a track record poses greater risks than an established one, for example, so indemnity, insurance, security deposit, remedies and other terms may differ. Value of space and other terms also depends on many factors.
- Building owners often have no control over terms of access for Bell companies and other incumbents: they were established in a monopoly environment. The only fair solution is to let the new competitive market decide and allow owners to renegotiate terms of all contracts. Owners cannot be forced to apply old contracts as the lowest common denominator when the owner had no real choice.

**3. Scope of Easements**

- The FCC cannot and should not expand the scope of easements already provided to existing telecommunications providers to allow every competitor to use the same easement or right-of-way. Grants in some buildings may be broad enough to allow other providers in, but others are narrow and limited to facilities owned by the grantee.
- If owners had known governments would allow other companies to piggy-back, they would have negotiated different terms. Expanding rights now would be a taking of private property.

**4. Expansion of Satellite Dish Rule**

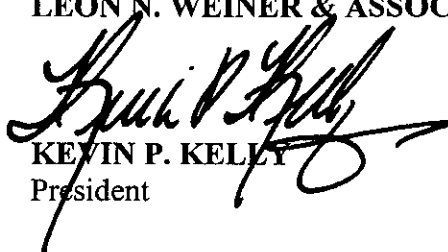
- I oppose the existing rule because I do not believe that Congress meant to interfere with our ability to manage our property.
- The FCC should not expand the satellite rule to include data and other services, because the law only applies to antennas used to receive video programming.

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
August 18, 1999  
Page 4 of 4

In summary, I am very much opposed to the proposed rule and urge the FCC to refrain from issuing it in final form. Thank you for your consideration of my views.

Sincerely,

**LEON N. WEINER & ASSOCIATES, INC.**



Handwritten signature of Kevin P. Kelly in cursive script.

**KEVIN P. KELLY**  
President

KPK/jml

Enclosures